

GEORGE FAUVER

IBLA 81-602

Decided March 25, 1982

Appeal from decision of the California State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. CA MC 57799.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Assessment Work

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where the file contains no evidence of receipt of the documents.

APPEARANCES: Steven J. Alpers, Esq., Fremont, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

George Fauver appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated April 1, 1981, declaring the Homeless Boy placer mining claim, CA MC 57799, located prior to October 21, 1976, abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claims on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976); 43 CFR 3833.2-1(a).

Appellant's notice of location for the Homeless Boy placer mining claim was recorded with BLM with the appropriate fee on October 22, 1979.

Appellant maintains on appeal that his affidavit of assessment work accompanied his notice of location and filing fee, which latter documents BLM received on October 22, 1979. In support of his contention that a proof of labor was indeed submitted to BLM, appellant has, on appeal, provided us with the affidavit of his wife, Betty Fauver, which states in part:

On or about October 9, 1979, I sent documents to the Bureau of Land Management in Sacramento concerning the Homeless Boy mine. I included in the letter a copy of the proof of labor, a check for \$5, and a notice of location of placer mine. On that date, I mailed the aforementioned documents in an envelope addressed to the United States Department of the Interior, Bureau of Land Management, located at 2800 Cottage Way, Room E2841, Sacramento, California 95825.

Appellant offers no other evidence in support of his assertion that an affidavit of assessment work did, in fact, accompany his notice of location and filing fee for the Homeless Boy placer mining claim.

[1] The statute, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that owners of mining claims located prior to October 21, 1976, on Federal lands file in the proper BLM office on or before October 22, 1979, and on or before December 30 of each calendar year following the calendar year thereafter, evidence of annual assessment work or a notice of intention to hold the mining claim. This requirement is mandatory, and failure to comply must result in a conclusive finding that the claims have been abandoned. Junerwanda J. Papaeliou, 60 IBLA 128 (1981).

[2] We have closely reviewed the record before us, and we find no indication that BLM timely received appellant's evidence of assessment work as appellant alleges. In the absence of such evidence, BLM properly declared the claim abandoned and void. Junerwanda J. Papaeliou, *supra*; Cleatus Sypult, 53 IBLA 171 (1981); Gary L. Barton, 47 IBLA 386

(1980). In answer to appellant's contention that the California State Office is at fault, we observe that there is a rebuttable presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Lawrence E. Dye, 57 IBLA 360, 363 (1981); John Walter Starks, 55 IBLA 266, 270 (1981). This presumption may be overcome by probative evidence to the contrary. The type of evidence required was recently discussed in H. S. Rademacher, 58 IBLA 152, 156, 88 I.D. 873, 875 (1981), where we stated:

This Board has found the inference of nonfiling drawn from the absence of the document from the case file to be effectively rebutted by a preponderance of the evidence in those cases where appellant's assertion that the document was timely filed is supported by substantial corroborating evidence. Bruce L. Baker, [55 IBLA 55 (1981)]; L. E. Garrison [52 IBLA 131 (1981)]. In Bruce L. Baker, *supra*, the assertion that the document in issue was actually filed was supported by an affidavit setting forth in detailed chronological sequence the events surrounding the filing which affidavit in turn was corroborated by the dates of notarial seals and filing with the county recorder's office. In the L. E. Garrison case, *supra*, claimant's assertion that the document in issue had been filed with BLM was corroborated by an affidavit of a subsequent telephone conversation with a BLM employee who opened the mailing and acknowledged timely receipt of the required document. The phone conversation was in turn documented by a long-distance telephone bill reflecting the call. On the other hand, the Board has held that uncorroborated statements, even where placed in affidavit form, to the effect that a document was filed are not sufficient to overcome the inference of nonfiling drawn from the absence of the document from the file and the practice of BLM officials to handle properly filings of legally operative documents.

The case at issue is similar to H. S. Rademacher, *supra*, in that appellant swears by affidavit that the proof of labor was mailed in the same package with the notice of location and check for recordation fee, which latter documents BLM acknowledges having been received. An affidavit that proof of labor was mailed together with the notice of location and check for recordation fee, which latter documents were received by BLM, is not sufficient to overcome the inference of nonfiling drawn from the absence of the document from the file and the practice of BLM officials to handle properly filings of legally significant documents, in the absence of substantial corroborating evidence that the document was filed. H. S. Rademacher, *supra*. The case at issue is distinguished from E. Joe Swisher, 44 IBLA 44 (1979), cited by counsel for appellant, by the lack of such corroborating evidence. Swisher presented a return receipt card executed by BLM which contained a notation as to the nature of the contents. The Board found that this evidence, coupled with unusual circumstances pertaining to the claims

in question which created doubt as to whether all documents submitted by Swisher had been linked with the appropriate file, supported a finding that the proof of labor in question had been filed. Such elements are lacking in the case at issue.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

